

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **John W. Stayt, Jr.** Confirmation No.: **1819**

Application Number: **09/392,817** Group Art Unit: **2611**

Filed: **September 9, 1999** Examiner: **Hunter B. Lonsberry**

For: **TRANSMISSION METHOD AND APPARATUS
FOR OPTICAL FIBER TELEVISION NETWORK**

ELECTRONICALLY FILED

Mail Stop Amendments
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
FOR FAILURE TO RECEIVE OFFICE ACTION**

Sir:

In response to the Notice of Abandonment dated March 21, 2007, Applicant respectfully petitions for withdrawal of the aforesaid Notice of Abandonment for the reasons set forth below.

FACTUAL BACKGROUND

On June 22, 2004, Applicant's undersigned representative received the cover sheet and first page of an Office Action dated June 18, 2004 as well as a PTO-892 form in connection with the above identified patent application. These papers are attached hereto as Exhibit A. The remainder of the Office Action, including all of the substance of the Office Action was not received.

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In October of 2004 and specifically on or before October 18, Applicant's undersigned representative began reviewing the substance of the Office Action and discovered that he had received only the aforementioned cover sheet, first page, and PTO-892 form of the Office Action dated June 18, 2004. On or about the same date, Applicant's undersigned representative called Examiner Lonsberry of the Patent and Trademark Office (hereinafter Office), who was and still is the PTO Examiner in charge of this application, and informed him that only the cover sheet, first page, and PTO-892 form had been received. Applicant's undersigned representative cannot recall if he spoke directly with Examiner Lonsberry, left a voice message, or both. In any event, Examiner Lonsberry left a message on Applicant's undersigned representative's voicemail apologizing for the error and indicating that the Examiner would transmit by facsimile a complete copy of the June 18, 2004 Office Action and reset the date for response. Applicant's undersigned representative saved that voice message on his voicemail system until early February of 2007 when it was automatically deleted in connection with the installation of upgrades to that voicemail system.

On October 18, 2004, Examiner Lonsberry did, in fact, transmit by facsimile transmission a new copy of the complete Office Action dated June 18, 2004. That facsimile transmission included a cover sheet stating "here is a copy of the office action, the date will be reset accordingly" written in the Examiner's hand. A copy of the June October 18, 2004 facsimile transmission is attached hereto as exhibit B.

In Applicant's undersigned representative's previous experience as a registered patent attorney, he has received incomplete Office Actions in the form of Office Actions mailed without the cited references, telephoned the patent Examiner requesting the

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references and asking that the date for responding be reset, subsequently received the missing documents, and then filed responses outside of the originally set time for response without incident.

On January 18, 2005, exactly 3 months from the October 18, 2004 date of the facsimile transmission, Applicant filed a response to the Office Action entitled "RESPONSE TO OFFICE ACTION DATED OCTOBER 18, 2004". A copy of that response is attached hereto as exhibit C.

Approximately 2 1/2 years later, on March 26, 2007, Applicant's undersigned representative received a Notice of Abandonment dated March 21, 2007 indicating that the application was abandoned for Applicant's failure to timely file a reply to the Office letter mailed on June 18, 2004. The Notice of Abandonment asserts that the reply was received on 28 January 2005 with a certificate of mailing or transmission dated 21 January 2005, which is after the expiration of the period for reply (including a total extension of time of 6 month(s)) which expired on December 18, 2004. A copy of the Notice of Abandonment is attached hereto as exhibit D.

Please note that the Certificate of Mailing on the response is actually dated January 18, 2004, not January 21, 2004. See exhibit C.

On or about March 27, 2007, Applicant's undersigned representative telephoned Examiner Lonsberry and told him that the Notice of Abandonment had been issued in error and explained essentially all of the facts described herein above. Examiner Lonsberry told Applicant's undersigned representative that he would take care of the matter and, particularly, would have the Notice of Abandonment withdrawn and would

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telephone Applicant's undersigned representative to update him on the status of the application after the Notice of Abandonment was withdrawn.

On April 6, 2007, after having received no word from the Examiner, Applicant's undersigned representative called the Examiner a second time and left a voicemail inquiring as to the status of this matter.

On April 19, 2007, still having received no word from the Examiner, Applicant's undersigned representative called the Examiner a third time and left a voicemail inquiring as to the status of this matter.

On May 1, 2007, still having received no word from the Examiner, Applicant's undersigned representative called the Examiner a fourth time and left a voicemail inquiring as to the status of this matter. On the same day, Applicant's undersigned representative also telephoned the Examiner's supervisor and left similar voice mail message with the supervisor.

On May 7, 2007, after having received no word from the Examiner, Applicant's undersigned representative called the Examiner a fifth time and spoke with the Examiner in person over the telephone. The Examiner once again indicated that he would take care of the matter and have the Notice of Abandonment withdrawn and would call Applicant's undersigned representative back when some action had been taken. The Examiner indicated that Applicant's undersigned representative could call the Examiner back by May 10, 2007 if he had not heard back from the Examiner yet.

On May 10, 2007, after having received no further word from the Examiner, Applicant's undersigned representative called the Examiner again and left a voicemail message.

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On May 10 or 11 2007, the Examiner called Applicant's undersigned representative and informed him that the Examiner could not withdraw the Notice of Abandonment and instructed Applicant's undersigned representative to file a petition from the Examiner's holding of abandonment in accordance with MPEP section 711.03(c) (I).

Applicant submits herewith as exhibit E a declaration of Applicant's undersigned representative attesting to the facts set forth herein above and to the fact that Applicant's undersigned representative has searched the file jacket for this application and confirmed that only the cover sheet, first page, and PTO-892 form of the June 18, 2004 Office Action were received prior to October 18, 2004 as set forth herein above.

REQUEST FOR RELIEF

MPEP section 711.03(c)(I) sets forth the showing normally required to establish non-receipt of an Office communication. It includes a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received and a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Applicant respectfully requests relief from the requirements that (1) Applicant's undersigned representative attest that the relevant docket records indicate that the Office communication was not received and (2) a copy of those docket records be provided. Specifically, obviously, in view of the facts as set forth above, the requested

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docket records will erroneously show that the Office Action was properly received even though, in fact, it was not properly received, but rather was received only partially, but not realized as being only partial a that time.

Regardless of the fact that the relevant docket records would not be in accordance with the exact words of MPEP 711.03(c)(I), the facts as set forth hereinabove and supported by the corroborating evidence submitted herewith firmly establish that Applicant did not properly receive the Office Action dated June 18, 2004 until October 18, 2004 and that Applicant reasonably believed that the date for responding to the Office Action had been reset to run from October 18, 2004. Accordingly, Applicant had every reason to believe that the response filed January 18, 2005 was a timely filed a response filed within three months of the Office Action to which it was responsive.

Furthermore, the facts as set forth above established that Applicant's undersigned representative has acted diligently since discovering that the application was considered abandoned by the Office.

Applicant is unaware of the reasons why the Notice of Abandonment was issued by the Office more than three years after the application had allegedly become abandoned.

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In view of the foregoing, Applicant respectfully requests the Office to withdraw the Notice of Abandonment, consider the amendment dated January 18, 2004, and issue a notice of allowance at the earliest possible date.

Respectfully submitted,

May 21, 2007
Dated

/Theodore Naccarella
Theodore Naccarella
Registration No. 33,023
SYNNESTVEDT & LECHNER LLP
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1101 Market Street
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TXN:pmf

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EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/392,817	09/09/1999	JOHN W. STAYT JR.	STAYT-26	1819

7590

06/18/2004

THEODORE NACCARELLA ESQUIRE
SYNNESTVEDT & LECHNER LLP
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA, PA 191072950

EXAMINER

LONSBERRY, HUNTER B

ART UNIT

PAPER NUMBER

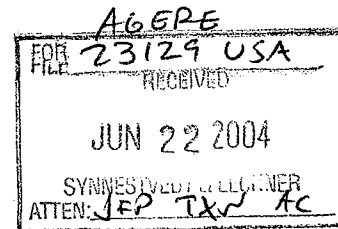
2611

ENTERED COMPUTER

DATE MAILED: 06/18/2004

9-18-04

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

09/392,817

Applicant(s)

STAYT, JOHN W.

Examiner

Hunter B. Lonsberry

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Notice of References Cited	Application/Control No. 09/392,817	Applicant(s)/Patent Under Reexamination STAYT, JOHN W.	
	Examiner Hunter B. Lonsberry	Art Unit 2611	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,449,688 B1	09-2002	Peters et al.	711/112
	B	US-5,734,589	03-1998	Kostreski et al.	345/716
	C	US-6,728,965 B1	04-2004	Mao, Weidong	725/38
	D	US-6,157,929 A	12-2000	Zamiska et al.	707/200
	E	US-6,337,715 B1	01-2002	Inagaki et al.	348/553
	F	US-5,583,560	12-1996	Florin et al.	725/40
	G	US-6,327,418 B1	12-2001	Barton, James M.	386/46
	H	US-6,546,426 B1	04-2003	Post, Lauren Lee	709/231
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

EXHIBIT B

ATTN: Ted Naccarella

Re 09/392,817

From Ex Hunter Lonsberry

here is a copy of the office action, the date
will be reset accordingly

Ague

FOR FILE	<u>23129 USA</u>
RECEIVED	
OCT 18 2004	
SYNNESTVEDT & LECHNER	
ATTEN:	<u>JEP/TXN</u>



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/392,817	09/09/1999	JOHN W. STAYT JR.	STAYT-26	1819

7590 06/18/2004

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 1101 MARKET STREET
 PHILADELPHIA, PA 191072950

EXAMINER

LONSBERRY, HUNTER B

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 06/18/2004

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Ague

FOR FILE	<u>23129 USA</u>
RECEIVED	
OCT 18 2004	
SYNNESTVEDT & LECHNER	
ATTN: <u>JEP/TXN</u>	

Office Action Summary

Application No.

09/392,817

Applicant(s)

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Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date, ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Notice of References Cited

Application/Control No.

09/392,817

Applicant(s)/Patent Under
Reexamination
STAYT, JOHN W.

Examiner

Hunter B. Lonsberry

Art Unit

2611

Page 1 of 1

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	J	US-			
	K	US-			
	L	US-			
	M	US-			

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	N					
	O					
	P					
	Q					
	R					
	S					
	T					

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	U	
	V	
	W	
	X	

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 8-13, 23, 24, 31-34, 66, 67 and 73-74, are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,728,965 to Mao.

Regarding claims 1, 2, 4, 8, 9, 23, 24, 31, 33, 34, 66, 67, Mao discloses a digital video system in which MPEG data is transmitted to a user, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data and synchronizes with the video signal for the new channel for display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

Regarding claim 3, 32, the stb 19 informs BDT 12 that the user has changed a channel and desires to view the entire program stream (column 8, line 27-column 9, line 31).

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Regarding claim 10, Mao discloses that the user may receive 40 different channels (column 8, lines 59-64) but only receives 1-2 channels simultaneously (column 5, lines 33-38).

Mao inherently stops full transmission of the previous channel, when in a 1 channel mode, as Mao discloses that data for only 1-2 channels may be delivered at one time, otherwise Mao would be exceeding the available bandwidth and be unable to deliver any additional programs.

Regarding claims 11-13, Mao discloses a digital video system in which MPEG data is transmitted to a user, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data and synchronizes with the video signal for the new channel for display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

Regarding claims 73-74, Mao discloses a digital video system in Figure 1 in which MPEG data is transmitted to a user stb 19 from an ATM network, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer 50 within BDU 12, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data informs the BDU 12 of the channel change which then transmits the new channel data and STB synchronizes with the video signal for the new channel to display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

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Mao's STB inherently contains a processor and memory as Mao discloses that MPEG 2 video is transmitted, and to decompress digital video, a processor is required and memory is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 14, 15, 25, 35, 36, 56, 68, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao in view of U.S. Patent 5,734,589 to Kostreski.

Regarding claims 5, 6, 14, 15, 25, 35, 36, 56, 68, and 81, Mao discloses an MPEG video system which caches data for each channel in a FIFO buffer, the data is constantly overwritten as new data enters and time passes, the data is used to display a video signal until the full signal is received.

Mao does not disclose storing time stamp information corresponding to the buffered data that indicate the time to read the data out and indicating what channel the sample corresponds.

Kostreski discloses a digital terminal which receives MPEG data, determines time stamp information, and receives a channel map which associates program streams

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with channels, and MPEG information which identifies a program's source (column 6, line 54-column 8, line 8, column 16, lines 8-30, column 31, lines 1-20)

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao to store the MPEG data, time stamp information and channel id information as taught by Kostrecki to enable a STB to facilitate rapid channel changes by a user.

Claims 7, 16-18, 27-29, 45-50, 57-60, 62-63, 70, 71, 78, 79 80, and 82-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao in view of U.S. Patent 6,546,426 to Post.

Regarding claims 7, 16, 19-20, 37, 49, 50, 70, 71, 82, Mao discloses a digital video system in which MPEG data is transmitted to a user, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data and synchronizes with the video signal for the new channel for display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31). Processor 55 keeps track of the most current I frame (column 9, lines 9-25).

Mao does not disclose selecting a sample for a selected channel with a time stamp closest to the current time.

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Post discloses in figure 7, a processes in which time stamped video data is stored in a buffer, a processor searches for video associated with the current time for playback (column 5, lines 39-64).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao to synchronize with the time stamp closest to the current time as taught by Post to ensure that both audio and video data would be synchronized upon playback.

Regarding claims 17, 27-29, 45, 57-60, 78, 79, and 84, Mao discloses that the position of each I-frame is traced by processor 55, and that data for time after the current time is buffered, so that synchronization will be preformed seamlessly as it takes roughly $\frac{1}{2}$ second to transmit the channel change command and receive the new data (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

Regarding claims 18, 46-48, 62-63, 80, 83, and 85, Mao discloses an MPEG video system, which caches data for each channel in a FIFO buffer, the data is constantly overwritten as new data enters and time passes.

Mao does not disclose the use of timestamps and overwriting data if it is stale.

Post discloses the use of time stamps but fails to disclose overwriting data if it is stale.

The examiner takes official notice that the use of timestamps and overwriting stale data is well known in the art.

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Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao and Post to utilize a timestamp for data and overwrite stale data in order to maximize the available buffer memory to retain only the latest data.

Claims 26, 38, 53-55, 69, and 75-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao.

Regarding claims 26, 38, 55, 69, and 75, Mao discloses that the TV channels contain MPEG-2 video data (column 7, lines 39-44).

Mao does not disclose that the TV channels contain TV programs.

The examiner takes official notice that the use of MPEG-2 video to carry television programs is well known in the art.

Therefore, it would have been obvious to one skilled in the art at the time of invention to utilize MPEG 2 to carry TV programs in order to take advantage of the image quality MPEG 2 provides.

Regarding claims 53, 54, Mao discloses a digital video system in Figure 1 in which MPEG data is transmitted to a user stb 19 from an ATM network, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer 50 within BDU 12, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data informs the BDU 12 of the channel change which then transmits the new channel data and STB synchronizes with the video signal for the new channel to display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

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Mao's STB inherently contains a processor and memory as Mao discloses that MPEG 2 video is transmitted, and to decompress digital video, a processor is required and memory is required.

Mao does not disclose the buffering system being located within a node, but instead locates it within BDT 12.

The examiner takes official notice that the use of local caching systems is well known in the art.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao, to locate the caching apparatus locally, to reduce the channel changing delays.

Regarding claims 76 and 77, Mao discloses that BIU 15 may communicate with a NIC inside a PC, and that STB outputs video to a television 39 (figure 1, column 4, lines 34-45).

Mao does not disclose outputting TV data to a monitor.

The examiner takes official notice that the use of a TV tuning card to display video on a monitor is well known in the art.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao, to display video on a PC monitor, to enable a user to watch TV while utilizing a computer.

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Claims 21, 30, 51, 64, 72, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao in view of U.S. Patent 6,157,929 to Zamiska.

Regarding claims 21, 30, 51, 64, 72, and 86, Mao discloses a digital video system in Figure 1 in which MPEG data is transmitted to a user stb 19 from an ATM network, the system only delivers data for 1-2 channels at a time but constantly buffers at least 15 frames for each channel in a FIFO buffer 50 within BDU 12, so that the video data is constantly refreshed, when a user changes the channel, BDU 12 then reads out the stored data informs the BDU 12 of the channel change which then transmits the new channel data and STB synchronizes with the video signal for the new channel to display (column 5, lines 33-44, column 6, lines 30-39, column 8, line 27-column 9, line 31).

Mao does not disclose that the samples are of lower resolution than the full channel data.

Zamiska discloses a system in which digital information may be transmitted at different quality levels, this data is then cached and played back to a user (column 5, line 63-column 6, line 59, column 18, line 47-column 19, line 25).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Mao to transmit a low quality sample as taught by Zamiska thus enabling a user to utilize a quickly rendered preview to aide a user in selection.

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Claims 22, 52, 65, and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao in view of U.S. Patent 5,583,560 to Florin.

Regarding claims 22, 52, 65, and 87, Mao discloses a video buffering system. Mao does not disclose displaying multiple channels simultaneously.

Florin discloses a video system in Figures 33-35, in which multiple PIP windows are displayed simultaneously, a user then selects a program to watch (column 20, line 20-column 21, line 17).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Mao to display multiple channels as taught by Florin to enable a user to rapidly select a program of interest.

Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,728,965 to Mao in view of U.S. Patent 6,337,715 to Inagaki.

Regarding claims 39-43, Mao discloses a video buffering system, which buffers at least 15 frames for each channel.

Mao does not disclose assigning priority to different channels, determining the amount of time a user watches a channel in order to transmit and store more sample data for popular channels and buffer sizing.

The examiner takes official notice that priority buffer sizing, including priority queuing schemes, is well known in the art.

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Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao to utilize priority buffer sizing to ensure that a user's favorite channels are switched to seamlessly.

Inagaki discloses a priority transmission system, which determines what the most popular channels based on viewing time and then prioritizes the transmission each different channel according to how often it is transmitted (column 18, line 17-column 20, line 11).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Mao with a priority buffer sizing feature to utilize the priority transmission system of Inagaki to ensure that a user's favorite channels are switched to seamlessly and to maximize the available bandwidth by transmitting programs which the user would be most interested in.

Regarding claim 44, Inagaki discloses that user viewing habits are determined by administrator 27 (column 18, lines 31-35).

Mao and Inagaki do not disclose determining the amount of time that a user watches at channel by a device at the program source.

The examiner takes official notice that reporting viewing habit information, which is then processed at a source location, such as a headend, is well known in the art.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Mao and Inagaki to determine a user's video habits at a source location, in order to reduce the complexity of the STB device.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,449,688 to Peters: Computer System and Process for Transferring Streams of Data Between Multiple Storage Units and Multiple Applications in a Scalable and Reliable Manner.

U.S./ Patent 6,327,418 to Barton: Method and Apparatus Implementing Random Access and Time-Based Function on a Continuous Stream of Formatted Digital Data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 703-305-3234. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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HBL


HAITRAN
PATENT EXAMINER

EXHIBIT C

AMENDMENT TRANSMITTAL LETTER (Large Entity)Applicant(s): **John W. Stayt, Jr.**

Docket No.

Stayt-26

Serial No.
09/392,817Filing Date
September 9, 1999Examiner
Hunter B. LonsberryGroup Art Unit
2611Invention: **TRANSMISSION METHOD AND APPARATUS FOR OPTICAL FIBER TELEVISION NETWORK****TO THE COMMISSIONER FOR PATENTS:**

Transmitted herewith is an amendment in the above-identified application.

The fee has been calculated and is transmitted as shown below.

CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	26 -	87 =	0 x	\$50.00	\$0.00
INDEP. CLAIMS	3 -	7 =	0 x	\$200.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00

- ☒ No additional fee is required for amendment.
- ☐ Please charge Deposit Account No. _____ in the amount of _____
- ☐ A check in the amount of _____ to cover the filing fee is enclosed.
- ☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **19-5425**.
- ☒ Any additional filing fees required under 37 C.F.R. 1.16.
- ☒ Any patent application processing fees under 37 CFR 1.17.


Signature

Dated:

1.18.05

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I certify that this document and fee is being deposited
on 1/18/2005 with the U.S. Postal Service as
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Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450.


Signature of Person Mailing Correspondence**Theodore Naccarella**

Typed or Printed Name of Person Mailing Correspondence

CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **John W. Stayt, Jr.**

Application Number: **09/392,817**

Group Art Unit: **2611**

Filed: **September 9, 1999**

Examiner: **Hunter B. Lonsberry**

For: **TRANSMISSION METHOD AND APPARATUS
FOR OPTICAL FIBER TELEVISION NETWORK**

CERTIFICATE OF FACSIMILE/MAILING

I hereby certify that this correspondence, along with any papers indicated as being enclosed, are being deposited as First Class Mail on January 18, 2005 in an envelope addressed to Mail Stop Amendments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

1.18.05
Date


Theodore Naccarella

Mail Stop Amendments
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION DATED OCTOBER 18, 2004

Sir:

In response to the Non-Final Office Action of October 18, 2004, please amend the above-identified application as follows:

Amendments to the specification are listed beginning on page 2 of this paper.

A listing of the claims as amended herein commences on page 3 of this paper.

Remarks begin on page 14 of this paper.

IN THE SPECIFICATION

Please replace the paragraph commencing on page 2, .line 1 with:

Radio frequency broadcast television is an analog system. That is, the television signals are broadcast in analog form. Since transmission antennae antennas are earth ~~base~~ based, and transmission powers are limited by law, adequate reception is commonly limited to less than 100 miles from the transmitting antenna.

IN THE CLAIMS

1. (Currently Amended): A method of simulating simultaneous receipt of a plurality of ~~channels of data~~ data streams over a network using a bandwidth less than that needed to simultaneously receive said plurality of ~~channels~~ data streams, said method comprising the steps of:

receiving one of said data streams selected by a user over said network;

transmitting said one of said data streams to said user;

receiving samples of the others of said data streams ~~data from each of said channels, said samples comprising less than all of said data comprising each of said channels;~~

storing said samples in a memory non-contiguously in time with said data streams; and

~~when a~~ responsive to said user selects newly selecting one of said other data streams ~~channels for use, reading out of~~ from said memory said sample of data ~~corresponding that corresponds~~ to said newly selected data stream; and ~~channel from said memory~~

transmitting said sample that corresponds to said newly selected data stream to said user.

2. (Currently Amended): A method as set forth in claim 1 further comprising the step of:

at or before the an end of said sample is read out from said memory, commencing receipt of ~~full data corresponding to said~~ newly selected data stream channel.

3. (Currently Amended): A method as set forth in claim 2 further comprising the step of:

at or before the end of said sample is completely read out of from said memory, transmitting to a source of said newly selected channel data stream a request to receive said ~~full data on said channel~~ newly selected data stream.

4. (Cancelled).

5. (Currently Amended): A method as set forth in claim 3 ~~wherein said data on each of said channels comprises data that, when received in full mode, would be received at a particular time and~~ wherein said step of receiving said samples comprises receiving said samples bearing time stamps indicating the time to which they correspond if received in ~~full mode~~ said corresponding data stream.

6. (Currently Amended): A method as set forth in claim 5 wherein said storing step further comprises storing said time stamps associated with said samples and storing information indicative of the ~~channel~~ data stream to which said sample corresponds.

7. (Currently Amended): A method as set forth in claim 6 wherein said step of reading out further comprises:

selecting for reading out from said stored samples a sample corresponding to said selected ~~channel~~ data stream having a time stamp most closely corresponding to a current time.

8. (Currently Amended): A method of simulating simultaneous receipt at a television of a plurality of television channels of data over a network using a bandwidth less than that needed to simultaneously receive said plurality of channels, said method comprising the steps of:

(1) receiving the full data for at least a selected one of said television channels;

(2) transmitting said full data for ~~one of~~ said selected television channels channel to said television;

(3) receiving samples of data from each other of said television channels, ~~said samples comprising less than all of said data comprising each of said television channels;~~

(4) storing said samples in a memory non-contiguously in time with said data streams; and

(5) when responsive to selection of a new one of said television channels is selected for viewing at said television, reading out a said sample of data corresponding to said newly selected television channel from said memory; and

(6) transmitting said sample of data corresponding to said newly selected television channel to said television.

9. (Currently Amended): A method as set forth in claim 8 further comprising the steps of:

(67) at or before the end of said sample is completely read out of said memory, transmitting to a source of said accessed newly selected channel a request to receive said full data on said selected channel; and

(78) at or before the end of said sample is completely read out from said memory, commencing receipt of full data on said newly selected channel.

10. (Currently Amended): A method as set forth in claim 9 ~~wherein step (7)~~ further ~~comprises~~ comprising:

(9) ceasing receipt of said full data of said previously selected channel ~~in full~~ mode.

11. (Currently Amended): A method as set forth in claim 7 further comprising the steps of:

(8) responsive to said newly selected channel remaining selected for a predetermined amount of time, at or before said sample is read, transmitting to a source of said newly selected channel a request to receive full data of said selected channel; and

(9) commencing receipt of full data of said newly selected channel ~~9 wherein steps (6) and (7) are performed only when said channel remains selected for a predetermined amount of time.~~

12. (Original): A method as set forth in claim 11 wherein said predetermined amount of time is less than a duration of said sample.

13. (Currently Amended): A method as set forth in claim 12 wherein said predetermined amount of time is an amount of time sufficiently smaller than the duration of said sample for steps (6) and (7) to be performed before the end of said sample is completely read.

14. (Original): A method as set forth in claim 9 wherein said data on each of said channels comprises data that, ~~when received in full mode,~~ would be received at a particular time if receiving full data for said channel and wherein said step of receiving said samples comprises receiving samples bearing time stamps indicating the time to which they correspond if receiving full data for the corresponding channel ~~received in full mode.~~

15. (Currently Amended): A method as set forth in claim 14 wherein said storing step comprises storing multiple samples per channel, including said time stamps associated with said samples, and storing information indicative of the channel to which said sample corresponds.

16. (Currently Amended): A method as set forth in claim 15 wherein said reading ~~step of reading out~~ further comprises:

selecting for reading out from said stored samples a sample corresponding to said selected channel having a time stamp most closely corresponding to a current time.

17. (Currently Amended): A method as set forth in claim 16 wherein at least some of said samples are samples corresponding correspond to times in said corresponding full data streams that are after the present time that they are stored.

18. (Original): A method as set forth in claim 17 further comprising the step of: marking samples as stale when said time stamp of said sample is earlier than the present time and wherein a sample may be overwritten when it has been marked stale.

19. (Currently Amended): A method as set forth in claim 9 wherein said samples comprise data that would ~~be~~ have been transmitted in full mode for the corresponding channel at the time the sample is taken was stored.

20. (Currently Amended): A method as set forth in claim 19 wherein a stored sample corresponding to each channel is overwritten each time a new sample corresponding to said channel is received.

21. (Original): A method as set forth in claim 8 wherein said samples are of a lower resolution than the full channel data.

22. (Currently Amended): A method as set forth in claim 8 further comprising the steps of:

responsive to a request from said television, reading out a plurality of samples,
each sample corresponding to a different one of said channels;
displaying said samples simultaneously on different portions of said television.

23-38. (Cancelled).

39. (Currently Amended): A method as set forth in claim 38 8 further comprising
the step of:
prioritizing said plurality of channels.

40. (Currently Amended): A method as set forth in claim 39:
wherein said prioritizing step comprises determining the amount of time users at
~~said node~~ watch each of said plurality of channels; and
wherein said transmitting and storing steps comprise transmitting and storing
more sample data for those channels that are watched more often.

41. (Original): A method as set forth in claim 40 wherein samples are
transmitted and stored more frequently for those channels that are watched more often.

42. (Original): A method as set forth in claim 40 wherein samples corresponding
to channels that are watched more often are longer than samples corresponding to
channels that are watched less often.

43. (Currently Amended): A method as set forth in claim 40 wherein said determining step comprises determining the amount of time that each channel is transmitted in full to said ~~node~~ television.

44-52. (Cancelled).

53. (Currently Amended): A communications network for simulating simultaneous transmission from a source to a node of a plurality of channels of data using a bandwidth less than that needed to simultaneously transmit said plurality of channels comprising:

a source for transmitting data over said network, said data comprising a plurality of channels of data;

at least one node for receiving data from said source;

a processor associated with said source, said processor programmed to transmit at least one a first channel of data in full to said at least one node ~~said~~ and to transmit samples of data ~~corresponding to~~ from others of said plurality of channels to said node;

a memory associated with said node for storing said samples non-contiguously with said data streams to which they correspond;

a processor associated with said node, said processor programmed to send data on said first channel ~~that is being received in full~~ to a display device and to send said samples to said memory for storage and, responsive to a user selecting a second channel for ~~forwarding to~~ viewing on said display device, reading out a said sample of data corresponding to said second ~~selected~~ channel from said memory.

54. (Currently Amended): A communications network as set forth in claim 53 wherein said processor associated with said node is further programmed to transmit to said source a request for full data transmission for said second selected channel responsive to said second channel remaining selected for a predetermined period of time and before the end of said sample is read out from said memory; and

wherein said processor associated with said source is further programmed to transmit said ~~at least one~~ second channel of data in full to said at least node responsive to said request.

55. (Original): A communications network as set forth in claim 54 wherein said data comprises television program data.

56. (Cancelled).

57. (Currently Amended): A communications network as set forth in claim 56 wherein said processor associated with said node is further programmed to transmit to said source a request ~~to receive~~ for said full data for said channel requested for display, said request being issued a predetermined period of time before the end of said sample is read out of said memory and wherein said processor associated with said source is further programmed to switch the ~~at least one~~ channel that is being transmitted in full to said node responsive to said request.

58. (Original): A communications network as set forth in claim 57 ~~wherein said data on each of said channels comprises data that, when received in full mode, would be received at a particular time and~~ wherein said samples further comprise time stamps

indicating the time to which they correspond ~~if received in full mode~~ in said corresponding channel and information disclosing the channel to which said data corresponds.

59. (Original): A communications network as set forth in claim 58 wherein said memory stores multiple samples per channel simultaneously and, when a user first requests a channel for display, said processor associated with said node is further programmed to read out from said memory said stored sample corresponding to said requested accessed channel having a time stamp most closely corresponding to a current time.

60. (Currently Amended): A communications network as set forth in claim 59 wherein said stored samples comprise samples corresponding to times that are after the present time that they are stored.

61. (Original): A communications network as set forth in claim 60 wherein said processor associated with said node is further programmed to mark stored samples as stale when said time stamp of said sample is earlier than the present time and wherein a sample may be overwritten when it has been marked stale.

62. (Original): A communications network as set forth in claim 55 wherein said samples comprise the data that would be transmitted in full mode for the corresponding channel at the time the sample is transmitted.

63. (Currently Amended): A communications network as set forth in claim 62 wherein said processor associated with said node is further programmed to overwrite a stored sample corresponding to each channel each time a new sample corresponding to said channel is transmitted.

64. (Original): A communications network as set forth in claim 53 wherein said samples are of a lower resolution than full channel data.

65. (Original): A communications network as set forth in claim 53 wherein, responsive to a request, said processor associated with said node is further programmed to read out a plurality of samples, each sample corresponding to a different one of said channels, for simultaneous display on said display device.

66-87. (Cancelled).

REMARKS

In view of the foregoing amendments and following remarks responsive to the Office Action of October 18, 2004, Applicant respectfully requests favorable reconsideration of this application.

All claims presently stand rejected on prior art grounds.

The application originally contained seven independent claims, namely, claims 1, 8, 23, 31, 53, 66, and 73. However, as a result of the amendments set forth hereinabove, only three independent claims now remain pending, namely, claims 1, 8 and 53. All of the independent claims basically recite the same invention, but from different perspectives.

The present invention concerns a technique for simulating the channel surfing experience of cable television or broadcast television (and particularly the essentially instantaneous access to a new data stream when changing channels) in a transmission scheme that does not permit simultaneous transmission of all channels. For instance, in cable television and broadcast television, all channels are simultaneously transmitted to the customer's home. Thus, when a customer changes channels, the data stream (i.e., picture and sound) for the newly selected channel essentially appears instantaneously on his television. However, in certain types of transmission systems, e.g., some fiber-optic transmission systems, it is not possible to transmit all of the channels simultaneously to the home. In such systems, it would be annoying to a television viewer who has become accustomed to rapid channel surfing to have to wait the one or two seconds that it might take to send a request from the home to the central office and then for the central office to respond by stopping transmission of the previously watched channel and transmitting the newly selected channel.

The present invention aims to solve this problem. Particularly, in accordance with the invention, the customer's television or set top box includes a memory which stores samples of the data streams of each of the available channels received from the central office. The samples are updated frequently and might comprise half a dozen seconds of data stream for that channel. When the customer changes channels, while the customer is waiting for the actual switching to occur from the previously viewed channel to the newly selected channel, the set-top box sends out the stored sample corresponding to the newly selected channel. In this manner, the customer will have essentially instantaneous access to a small snippet of the program on that channel so that he can determine whether or not it is something he is interested in watching or whether he will continue surfing to the next channel. The sample should be updated frequently so that it is always representative of the actual program being shown on that channel at that time. In a preferred embodiment of the invention, if the customer remains on that channel for a particular period of time, e.g., four seconds, then the set-top box will then request the actual data stream for the newly selected channel from the central office. However, if the viewer continues to rapidly channel surf, the set top box will never actually send out a request for the data stream of that channel.

If the viewer stays on a channel long enough, when the stream switches over from the sample to the actual data stream for that channel, the viewer will most likely observe a jump or interruption in the stream. However, this should not be too disconcerting since it is unlikely that the customer will have obtained enough information about the program on that channel to care about the content of the portion of the stream that was jumped.

In all of the prior art rejections, the Office cites the Mao reference as disclosing the basic elements of the present invention. However, this reliance is misplaced as the

Mao reference is fundamentally different from the present invention. Particularly, like the present invention, Mao is intended to address the issue of minimizing the delay between selecting a new channel and actually receiving the data stream of that channel in a television transmission system in which all of the channels cannot be transmitted to the customer simultaneously. However, Mao addresses an entirely different issue than the present invention. As noted above, in the present invention, the local set top box of the viewer locally stores samples of all of the channels in the customer's set top box.

Mao addresses an entirely different issue unique to compressed data streams such as MPEG, which are not even mentioned in the present specification (although, of course, the present invention can be used with any data stream). Specifically, a receiver must synchronize with a compressed video stream before it can reproduce the data. Mao discloses a technique for reducing the time needed to synchronize with a compressed data stream. Furthermore, the portion of Mao that the Office alleges is relevant concerns the equipment at the central office, not the equipment local to the viewer.

More particularly, in Mao, the problem is that, in MPEG data streams, one cannot simply start receiving the data stream from any frame. In MPEG, there are "I frames" approximately every half second. An I frame contains complete information as to the content of that frame. The next approximately 15 frames of data are not traditional frames. Instead, the information transmitted corresponding to that frame is information describing the differences between that frame and the preceding frame. Accordingly, one can only join an MPEG data stream at an I frame. Accordingly, when one changes channels, in addition to all of the other factors contributing to the delay in actually receiving the stream corresponding to that channel, one may have to wait as much as

half a second just for an I frame to be located at the channel switching circuit in the central office (the BTD).

Mao addresses the issue of eliminating the wait for an I frame in an MPEG data stream. Particularly, in Mao, the BTD 12 receives all of the channels from an ATM network 26 simultaneously. The BTD buffers at least a long enough period of each data stream in a buffer 50 (figure 7) so that at least one I frame in each channel is in the buffer 50 at any given time. As stated by Mao at column 8, lines 17-21, a conventional BTD may already have a buffer that stores enough data of each channel so that an I frame is always in the buffer for each channel. Thus, Mao's invention may not require any additional hardware over a conventional BTD. The innovation of Mao is that Mao maintains and constantly updates pointers into the buffer that point to the I frames of every channel. Accordingly, in a network in which there is insufficient bandwidth to transmit all of the available channels from the central office to the viewer, when the central office BTD receives a request from a viewer to change the channel to a new channel that was not being previously transmitted to the viewer, the BTD accesses the corresponding pointer to instantaneously access the last I frame of the requested channel and begin transmission to the viewer from that frame.

This has essentially nothing to do with the present invention. In Mao, nothing is being stored locally at the customer's location. In Mao, the customer does not receive a small sample snippet of the channel data stream prior to receiving the true, real-time data stream corresponding to that channel. In Mao, the BTD is at the central office, not at the viewer's location. Finally, in Mao, the BTD (which is the component the Office relies upon in the rejection) is receiving all of the channels from the ATM network, not just one. The stored data that the Office is relying on as corresponding to the stored samples of the present invention is nothing more than the data streams of themselves.

Mao is simply buffering the data streams at the BTB. At the BTB, there is no need to choose which data stream to receive. The connection between the BTB and the ATM network is sufficient to carry all of the streams. It is only after the BTB that a single channel must be chosen for transmission to the viewer's home.

Turning now to the claim language that distinguishes over the prior art, Applicant has herein amended the claims substantially to improve their form, grammar and structure, to cancel repetitive, prolix, or otherwise unnecessary claims, and to make the claim set more manageable. Accordingly, while the claim set has been substantially revised, the distinctions over the prior art are essentially the same in the new claim set as in the original claim set.

For instance, independent claims 1 and 8 clearly distinguish over Mao at least by virtue of the fact that they both recite "storing said samples in a memory non-contiguously in time with said data streams". This language cannot be read on Mao's simple buffering of the data streams as asserted by the Office because the data stored in the BTB buffer comprises the actual data streams. Hence, the samples are not non-contiguous with the data stream that they represent. They are the data streams.

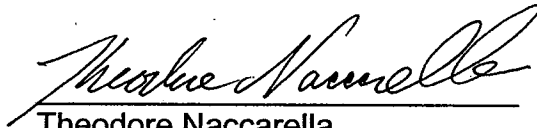
Independent claim 53 likewise recites "a memory associated with said node for storing said samples non-contiguously with said data streams to which they correspond".

The dependent claims add many more limitations that are not found in the prior art of record. However, given the fundamental flaw in the Office's reliance on Mao as teaching the basic invention, a detailed review of those distinctions is unnecessary. All of the dependent claims distinguish over the prior art for at least the same reasons given with respect to the independent claims from which they depend. The secondary references do not add the fundamental teachings lacking from Mao and therefore, the

issue of whether they contain the teachings for which they have been cited and/or whether the proposed combinations are suggested in the art are not even reached. Nevertheless, it should now be clear in view of the fact that Mao teaches a system that is fundamentally different than originally perceived by the Office, that the alleged motivations for all of the proposed combinations of Mao with the secondary references are inoperative.

In view of the foregoing amendments and remarks, this application is now in condition for allowance. Applicant respectfully requests the Office to issue a Notice of Allowance at the earliest possible date. The Examiner is invited to contact Applicant's undersigned counsel by telephone call in order to further the prosecution of this case in any way.

Respectfully submitted,



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Dated

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EXHIBIT D



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/392,817	09/09/1999	JOHN W. STAYT JR.	STAYT-26	1819

7590 03/21/2007
THEODORE NACCARELLA ESQUIRE
SYNNESTVEDT & LECHNER LLP
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA, PA 191072950

ENTERED ON COMPUTER

5-21-07
Petition for Review
Deadline

EXAMINER

LONSBERRY, HUNTER B

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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03/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Tim Graddy

John Miller

571-272.7353

3 Hunter Lonsberry

571-272.7298

Agere

FOR FILE	23129 USA
RECEIVED	
MAR 26 2007	
SYNNESTVEDT & LECHNER	
ATTN: JFP/TCN/AYC	

Notice of Abandonment

Application No.

09/392,817

Applicant(s)

STAYT, JOHN W.

Examiner

Art Unit

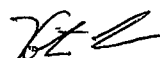
Hunter B. Lonsberry

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 18 June 2004.
 - (a) ☒ A reply was received on 28 January 2005 (with a Certificate of Mailing or Transmission dated 21 January 2005), which is after the expiration of the period for reply (including a total extension of time of 6 month(s)) which expired on 12/18/04.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


Hunter B. Lonsberry
Patent Examiner
Art Unit 2623

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **John W. Stayt, Jr.**

Application Number: **09/392,817**

Group Art Unit: **2611**

Filed: **September 9, 1999**

Examiner: **Hunter B. Lonsberry**

For: **TRANSMISSION METHOD AND APPARATUS
FOR OPTICAL FIBER TELEVISION NETWORK**

ELECTRONICALLY FILED

Mail Stop Amendments
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

DECLARATION OF THEODORE NACCARELLA

I, Theodore Naccarella, hereby declare:

1. I am a patent practitioner registered to practice before the United States Patent and Trademark Office and a partner in the intellectual property law firm of Synnestvedt & Lechner LLP and have been since before the present application was filed. I am the attorney responsible for the prosecution of the above-identified patent application on behalf of the Applicant.

2. On June 22, 2004, Synnestvedt & Lechner LLP received the cover sheet and first page of an Office Action dated June 18, 2004 as well as a PTO-892 form in connection with the above identified patent application. These papers are attached hereto as Exhibit A. The remainder of the Office Action, including all of the substance of the Office Action was not received.

3. In October of 2004 and specifically on or before October 18, I began reviewing the substance of the Office Action dated June 18, 2004 and discovered that we had received only the aforementioned cover sheet, first page, and PTO-892 form of the Office Action. On or about the same date, I called Examiner Lonsberry of the Patent and Trademark Office (hereinafter Office), who was and still is the PTO Examiner in charge of this application, and informed him that I had received only the cover sheet, first page, and PTO-892 form. I do not recall if I spoke directly with Examiner Lonsberry, left a voice message, or both. In any event, Examiner Lonsberry left a message on my voicemail apologizing for the error and indicating that he would transmit by facsimile a complete copy of the June 18, 2004 Office Action and reset the date for responding. I

4. I saved that voice message on my voicemail system until early February of 2007 when it was automatically deleted while I was out of the country on vacation in connection with the installation of upgrades to that voicemail system.

5. On October 18, 2004, Examiner Lonsberry did, in fact, transmit by facsimile transmission a new copy of the complete Office Action dated June 18, 2004. That facsimile transmission included a cover sheet stating "here is a copy of the office action, the date will be reset accordingly" written in the Examiner's hand. A copy of the June October 18, 2004 facsimile transmission is attached hereto as exhibit B.

6. In my previous experience as a registered patent attorney, I had received incomplete Office Actions in the form of Office Actions mailed without the cited references, telephoned the patent Examiner requesting the references and asking that

the date for responding be reset, subsequently received the missing documents, and then filed responses outside of the originally set time for response without incident.

7. On January 18, 2005, exactly 3 months from the October 18, 2004 date of the facsimile transmission, I filed a response to the Office Action entitled "RESPONSE TO OFFICE ACTION DATED OCTOBER 18, 2004". A copy of that response is attached hereto as exhibit C.

8. Approximately 2 1/2 years later, on March 26, 2007, I received a Notice of Abandonment dated March 21, 2007 indicating that the application was abandoned for Applicant's failure to timely file a reply to the Office letter mailed on June 18, 2004. The Notice of Abandonment asserts that the reply was received on 28 January 2005 with a certificate of mailing or transmission dated 21 January 2005, which is after the expiration of the period for reply (including a total extension of time of 6 month(s)) which expired on December 18, 2004. A copy of the Notice of Abandonment is attached hereto as exhibit D.

9. I note that the Certificate of Mailing on the response is actually dated January 18, 2004, not January 21, 2004. See exhibit C.

10. On or about March 27, 2007, I telephoned Examiner Lonsberry and told him that the Notice of Abandonment had been issued in error and explained essentially all of the facts described herein above. Examiner Lonsberry told me that he would take care of the matter and, particularly, would have the Notice of Abandonment withdrawn and

would telephone to update me on the status of the application after the Notice of Abandonment was withdrawn.

11. On April 6, 2007, after having received no word from the Examiner, I called the Examiner a second time and left a voicemail inquiring as to the status of this matter.

12. On April 19, 2007, still having received no word from the Examiner, I called the Examiner a third time and left a voicemail inquiring as to the status of this matter.

13. On May 1, 2007, still having received no word from the Examiner, I called the Examiner a fourth time and left a voicemail inquiring as to the status of this matter. On the same day, I also telephoned the Examiner's supervisor and left similar voice mail message with the supervisor.

14. On May 7, 2007, after having received no word from the Examiner, I called the Examiner a fifth time and spoke with the Examiner in person over the telephone. The Examiner once again indicated that he would take care of the matter and have the Notice of Abandonment withdrawn and would call me back when some action had been taken. The Examiner indicated that Applicant's undersigned representative could call the Examiner back by May 10, 2007 if he had not heard back from the Examiner yet.

15. On May 10, 2007, after having received no further word from the Examiner, I called the Examiner again and left a voicemail message.

16. On May 10 or 11 2007, the Examiner called to inform me that the Examiner could not withdraw the Notice of Abandonment and instructed me to file a petition from the Examiner's holding of abandonment in accordance with MPEP section 711.03(c) (I).

17. I have searched the file jacket for this application and confirmed that it reflects that only the cover sheet, first page, and PTO-892 form of the June 18, 2004 Office Action were received prior to October 18, 2004.

18. I hereby declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,



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May 18, 2007
Dated